IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.37997 OF 2004

Babubhai V.Patel .. Petitioner/Accused

Vs.

M/s.VPX IMPEX PVT.LTD.
rep. by its Manager
S.Ramesh, Madipakkam,
Chennai-91. .. Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C. as stated therein.

For Petitioner: : Mr.P.Kumaresan
For Respondent: : Mr.R.S.Jeevarathinam

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O R D E R

The above Criminal Original Petition has been filed by the petitioner praying to modify the condition imposed in Crl.M.P.No.9958 of 2004 by order dated 24.11.2004 in C.C.No.1037 of 2004 by the Court of Judicial Magistrate, Tambaram.

2. The case of the petitioner is that the respondent had filed a private complaint against the petitioner for an alleged offence under Section 138 and 142 of Negotiable Instruments Act, 1881 and the same was taken on file in C.C.No.1037 of 2004 by the Court of Judicial Magistrate Tambaram and the same is pending for trial; that since the summons issued on the petitioner was returned, the learned Magistratae has issued a Bailable Warrant against the petitioner; that on execution of the Bailable Warrant, the petitioner was arrested from Gujarat and taken to the trial Court and the learned Judicial Magistrate has passed an order to remand the petitioner to judicial custody; that he filed a bail application before the trial Court and the same was granted on condition to furnish a security for Rs.54 lakhs with two sureties each for a like sum with immovable properties, further directing the petitioner to deposit the passport in the trial Court till the disposal of the case. On such averments, he would pray for the relief extracted supra.

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3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent as well and the materials placed on record have also been perused.

4. During arguments, the learned counsel for the petitioner would cite a decision reported in (2004) M.L.J.(Crl.) 421 (R.SANTHAKUMAR V. THE INSPECTOR OF POLICE NEELANKARI,CHENNAI) wherein it has been held that

> "Non-bailable warrant issued without a preceding bailable warrant where the offence is bailable, is not in accordance with the scheme of the criminal procedure code and hence illegal. Therefore, while exercising the power conferred under Sec.87, Crl.P.C. and issuing a warrant, in a case of bailable offence, the Magistrate shall always issue at the first instance a bailable warrant(including the endorsement provided under Sec.71 Crl.P.C.). If the person does not appear before the Court even after execution of bailable warrant, then, and only then the Magistrate may issue a non-bailable warrant. Therefore, in all cases under Sec.138 of the Negotiable Instruments Act, though it is possible or there is no legal infirmity for the Magistrate to issue a non-bailable warrant for the reasons to be recorded in writing, yet, considering the bailable nature of the offence, underSec.138 of the Negotiable Instruments Act the Magistrate shall always issue "bailable warrant" at the first instance."

Citing the above decision of this Court, the learned counsel for the petitioner would further submit that the complaint has been filed only in the last week of August 2004 and the offence against the petitioner is only bailable offence and that the petitioner has executed a mortgage deed depositing the title deeds in favour of the complainant in respect of the properties worth about 27 lakhs. On such averments he would pray for the relief extracted supra.

5. On the other hand, the learned counsel for the respondent would submit that the cheque amount is Rs.54 lakhs; that the petitioner is evading to receive the Court notice and since he failed to appear before the trial Court, he has been produced before the trial Court only by issuing bailable warrant and hence the order passed by the trial Court is a justifiable order and hence he would pray to confirm the order of the trial Court and for dismissal of the above Criminal Original Petition.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what this Court is able to assess from the facts and

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circumstances of the case is that the petitioner who is an accused in the case in C.C.No.10337 of 204 on the file of the Court of Judicial Magistrate, Tambaram has been issued with the bailable warrant and on account of the summons returned un-served, the said Magistrate seems to have issued the said bailable warrant against the petitioner and on execution of the same, has ordered the bail application imposing conditions including one to furnish security for a sum of Rs.54 lakhs with two sureties for a like sum each with immovable property and to deposit the passport before the said Court.

7. On the part of the learned counsel for the petitioner causing production of the xerox copy of the deed of mortgage, it would be argued that for the debt or liability alleged to have been incurred, already a deed of mortgage has been executed for a sum of Rs.27 lakhs; that in an arrest caused on a bailable warrant, that too in a case of summons proceedings, the condition imposed to furnish a security for Rs.54 lakhs with two sureties for a like sum each is nothing but an arbitrary exercise of power by the Magistrate and denial of the bail by imposing such un-adoptable conditions.

8. Even on the part of the respondent only an apprehension had been expressed that the petitioner may go abroad, in which event, it would be difficult to secure him if he is permitted to go on bail. In such circumstances, it is only desirable to impose a condition to deposit the passport and the same has been done by the trial Court. But, so far as the other condition imposed to furnish security for Rs.54 lakhs with two sureties for a like sum each is concerned, it is not only excess and exorbitant but also would reveal the arbitrary and high handed exercise of power by the Magistrate in imposing such conditions while ordering the release of a person in a bailable matter and it would only show that the presiding officer is not having a balanced mind in adopting such repressive measures imaginarily, which is impossible to comply with as it is in the case of the petitioner, who in spite of having been enlarged on bail is not able to come out on bail because of the stringent repressive conditions imposed by the Magistrate which is neither reasonable nor could be complied with in a case of such nature.

9. In the above circumstances, it is only prudent for this Court to exercise its inherent powers conferred by law under Section 482 of the Cr.P.C. causing interference into the unreasonable and un-conscionable condition imposed by the Magistrate for the release of the petitioner on bail in such a bailable case and hence the following order:

In result,

(i) the above Criminal Original Petition is partly allowed;

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(ii) the condition imposed in Crl.M.P.No.9959 of 2004 by order dated 24.11.2004 in C.C.No.1037 of 2004 by the Court of Judicial Magistrate, Tambaram requiring the petitioner to furnish security for Rs.54 lakhs with two sureties for a like sum each with immovable property is modified;

(iii) instead, the petitioner shall execute a personal bond for a sum of Rs.25,000/- (Rupees twenty-five thousand only with two sureties each for a like sum to the satisfaction of the Judicial Magistrate, Tambaram. Sureties shall be men of status and shall produce their family cards and original title deeds for verification of the Magistrate. No surety certificate either from the Tahsildar or from the Village Administrative Officer need be emphasized;

(iv) all other conditions imposed by the Court of Judicial Magistrate, Tambaram shall persist.

gr.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate, Tambaram.

2. The Chief Judicial Magistrate, Chingleput.

+ 1 CC to M/s.P.Kumaresan, Advocate SR No.56640.

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PRE DELIVERY ORDER IN
CRL.O.P.NO.37997 OF 2004

21.12.2004

MAB (CO)
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